

General Information Letter: Activities not protected under Public Law 86-272.

February 8, 1999

Dear:

This is in response to your letter dated October 20, 1998, in which you request a letter ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department.

In your letter you have stated the following:

Our firm represents a client whom we believe does not have sufficient nexus in your state to have a corporate income tax filing requirement. Our belief is based on the following information.

Our client is engaged in the business of wholesale food distribution. All products are distributed from one of three distribution centers: xxxxxxxx, Georgia; xxxxxx, Florida; or xxxxxxxxxxxx, Kentucky.

All sales to locations within your state are solicited from outside of the state. In addition, all orders to the state are filled from outside of the state. Deliveries to your state are made by company employees in trucks leased by the company. Some drivers may be residents of your state.

The company does not own or lease any property within your state. Please advise us as to whether or not our understanding is correct.

Response

Section 502(a)(2) of the Illinois Income Tax Act (IITA) specifies that any corporation which is qualified to do business in this state and is required to file a federal return must file an Illinois return, regardless of whether it is liable for any tax imposed by the Act. This may be relevant since you have asked about a filing requirement.

You raise the question of nexus, which will be relevant to the client's actual liability for tax under the Act. As you obviously recognize, a detailed factual analysis is necessary to determine whether a taxpayer's activities are sufficient to establish nexus for state taxation. For this reason, the Illinois Department of Revenue will not provide a prospective ruling to any taxpayer on the issue. It can only be determined definitively within the context of an audit, where all of the facts are available to a DOR representative. Generally, however, the presence within the state of a taxpayer's employees or equipment is sufficient to establish nexus if its activities go beyond mere solicitation. See *Wisconsin v. William Wrigley, Jr., Co.* 112 S. Ct. 2447 (1992).

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please

submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney -- Income Tax